

DOCKET FILE COPY/ ORIGINAL
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 02-12
FM Broadcast Stations.)	RM-10356
(Ash Fork, Chino Valley, Dolan Springs,)	RM-10551
Fredonia, Gilbert, Peach Springs, Seligman, and)	RM-10553
Tusayan, Arizona; Moapa Valley, Nevada; Beaver)	RM-10554
and Cedar City Utah))	
)	

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 FCC MAIL SECTION

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 21, 2003

Released: November 26, 2003

By the Assistant Chief, Audio Division:

1. At the request of Liberty Ventures III, LLC ("Liberty Ventures"), the Audio Division has before it the *Notice of Proposed Rule Making* ("Notice") in this proceeding,¹ proposing the allotment of Channel 285A at Ash Fork, Arizona,² as that community's first local aural transmission service. Liberty Ventures filed Comments. NPR Phoenix, LLC ("NPR Phoenix") and Spectrum Scan, LLC ("Spectrum Scan") each filed a Counterproposal. After discovering that their Counterproposals were in conflict, these parties filed Joint Reply Comments. Subsequently, Spectrum Scan filed Reply Comments and NPR Phoenix filed Further Reply Comments. Deborah Comley filed a Petition for Rule Making proposing the allotment of Channel 221A to Beaver, Utah, which will be treated as a counterproposal in this proceeding. For the reasons discussed below, we are allotting channels at Ash Fork, Peach Springs, and Fredonia, Arizona, and Beaver, Utah. We are also reallotting Channel 224C, Station KRRN, from Dolan Springs, Arizona, to Moapa Valley, Nevada, and are modifying the Station KRRN license to specify Moapa Valley as the community of license. To accommodate this reallotment, we are substituting channels at Cedar City, Utah, and Tusayan, Arizona.

2. In response to the *Notice*, we received two Counterproposals. NPR Phoenix proposes the allotment of Channel 285C3 to Peach Springs, Arizona, as a first local service. This proposal conflicts with the *Notice*'s proposed allotment of Channel 285A at Ash Fork, Arizona. In order for Ash Fork to have a first local service, NPR Phoenix proposed the allotment of Channel 280A to Ash Fork. To accommodate a Channel 280A allotment at Ash Fork, NPR Phoenix proposed two channel substitutions.

¹ Ash Fork, Arizona, 17 FCC Rcd 1660 (MB 2002).

² Ash Fork is a Census Designated Place with a 2000 U.S. Census population of 457 persons. The information submitted by Liberty Ventures demonstrates that Ash Forks qualifies as a community to which an FM broadcast allotment can be made pursuant to Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(b) (2003).

First, it proposed the substitution of Channel 267A³ for Channel 277A at Seligman, Arizona, and the modification of the Station KZKE license to specify operation on Channel 267A. Second, it proposed the substitution of Channel 232C3 for Channel 280C3 at Chino Valley, Arizona, and modification of the Station KFPB license to specify operation on Channel 232C3.⁴

3. The second counterproposal was filed by Spectrum Scan. Spectrum Scan proposed the allotment of Channel 285C1 to Fredonia, Arizona, which conflicts with the proposed Channel 285A allotment at Ash Fork. In order to provide a first local service to Ash Fork, Spectrum Scan proposed an alternative Channel 223A allotment at Ash Fork. In order to accommodate Channel 223A at Ash Fork, Spectrum Scan proposed the allotment of alternate Channel 232A at Chino, Arizona, in MM Docket No. 01-264 in lieu of Channel 223A. To accommodate Channel 223A at Ash Fork, Spectrum Scan also proposed the reallocation of Station KRRN, Channel 224C, from Dolan Springs, Arizona, to Moapa Valley, Nevada. In order to accommodate Channel 224C at Moapa Valley, Spectrum Scan proposed the substitution of Channel 221C for Channel 223C at Cedar City, Utah, and modification of the Station KXFF license to specify operation on Channel 221C. To accommodate Channel 221C at Cedar City, Spectrum Scan proposed the substitution of Channel 222A for Channel 221A at Tusayan, Arizona, and modification of the Station KSGC license to specify operation on Channel 222A. As noted earlier, Deborah Comley filed a Petition for Rule Making prior to the comment date in this proceeding proposing the allotment of Channel 221A to Beaver, Utah. The proposed Channel 221A allotment at Beaver conflicts with the proposed Channel 221C substitution at Cedar City. To remove this conflict, Spectrum Scan proposed the allotment of either Channel 246A or Channel 261 at Beaver.

4. After the filing of their respective Counterproposals, Spectrum Scan and NPR Phoenix discovered that their Counterproposals were mutually exclusive. Specifically, the NPR Phoenix proposal for a Channel 285C3 allotment at Peach Springs conflicts with the Spectrum Scan proposal for a Channel 285C1 allotment at Fredonia. In addition, the NPR Phoenix proposal for a Channel 232C3 substitution at Chino Valley conflicts with the Spectrum Scan proposal for a Channel 232A allotment at Chino Valley. To remove these conflicts, these parties filed their Joint Reply Comments proposing a "Global Resolution."

5. In resolving conflicts between mutually exclusive FM allotments, we normally rely on the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁵ After careful review of the entire record in this proceeding, we are able to accommodate the proposals set forth in this proceeding. First of all, we are allotting Channel 267A to Ash Fork, Arizona.⁶ This action will provide a

³ In its Further Reply Comments, NPR Phoenix recommended Channel 227A for Station KZKE and Channel 267A for Ash Fork, in order to accommodate another rulemaking proceeding in MM Docket No. 02-73.

⁴ As a "further component" of its counterproposal, NPR Phoenix proposed the substitution of Channel 280C1 for 280C2 at Gilbert, Arizona, and the modification of its Station KEDJ license to specify operation on Channel 280C1. A counterproposal must conflict with either the proposal set forth in a Notice of Proposed Rule Making or a timely filed counterproposal. See *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931, n.5 (1990). In this instance, this proposed upgrade at Gilbert does not conflict with any proposal in this proceeding and cannot be considered in the context of this proceeding.

⁵ 90 F.C.C. 2d 88 (1982). The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁶ In the Joint Reply Comments, the parties suggested the allotment of Channel 280A to Ash Fork. We are allotting alternate Channel 267A to accommodate a resolution of MM Docket No. 02-73. As a result of this allotment, it will not be necessary to make two related channel substitutions. Specifically, we will not substitute Channel 227A for Channel 277A at Seligman, Arizona, and modify the Station KZKE license to specify operation on Channel 227A, or substitute Channel 232C3 for Channel 280C3 at Chino Valley, Arizona, and modify the Station KFPB license to specify operation on Channel 232C3. Similarly, since we are not allotting Channel 223A to Ash Fork, it will not be (continued....)

first local service for Ash Fork and provide 60 dBu service to 2,073 persons. We are also allotting Channel 285C3 to Peach Springs, Arizona, thus providing a first local service to Peach Springs. Peach Springs is a Census Designated Place with a 2000 U.S. Census population of 600 persons. Peach Springs is also the capital of the Hualapai Nation and is located on the Hualapai Indian Reservation. We are allotting Channel 278C1 to Fredonia, Arizona, thus providing a first commercial service to Fredonia, an incorporated community of 1,036.

6. We are also reallocating Channel 224C from Dolan Springs, Arizona, to Moapa Valley, Nevada, and are modifying the Station KRRN license to specify Moapa Valley as the community of license.⁷ This action will provide Moapa Valley, which has a 2000 U.S. Census population of 5,784 persons, with a second local service. Dolan Springs, with a 2000 U.S. Census population of 1,867 persons, will continue to receive local service from FM Station KOAS. To accommodate Channel 224C at Moapa Valley, we are substituting Channel 221C for Channel 223C at Cedar City, Utah, and are modifying the Station KXFF license to specify operation on Channel 221C. In response to an *Order to Show Cause*,⁸ the licensee of KXFF has agreed to the channel substitution. Spectrum Scan has agreed to reimburse the licensee of KXFF for the costs of changing its channel. In order to accommodate the Channel 221C substitution at Cedar City, we are substituting Channel 222A for Channel 221A at Tusayan, Arizona, and are modifying the Station KSGC license to specify operation on Channel 222A.⁹ Finally, to accommodate the Channel 221C substitution at Cedar City, Utah, we are allotting Channel 246A to Beaver, Utah, instead of the originally proposed Channel 221A allotment. Beaver is an incorporated community with a 2000 U.S. Census population of 2,454 people. It is the County Seat of Beaver County, Utah.

7. Channel 267A can be allotted to Ash Fork, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 35-16-13 NL and 112-32-31 WL, with a site restriction of 7.4 kilometers (4.6 miles) northwest of Ash Fork. Channel 285C3 can be allotted to Peach Springs, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 35-31-39 NL and 113-19-49 WL, with a site restriction of 8.6 kilometers (5.3 miles) east of Peach Springs. In addition, Channel 278C1 can be allotted to Fredonia, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 36-53-00 NL and 112-11-40 WL, with a site restriction of 29.5 kilometers (18.3 miles) east of Fredonia. Channel 224C can be allotted to Station KRRN, at Moapa Valley, Nevada, consistent with the engineering requirements of the Commission's Rules, at coordinates of 36-35-06 NL and 114-36-01 WL, with a site restriction of 11.7 kilometers (7.3 miles) west of Moapa Valley. Channel 221C can be allotted to Station KXFF, Cedar City, Utah, consistent with the engineering requirements of the Commission's rules, at coordinates of 37-38-41 NL and 113-22-28 WL, with a site restriction of 27.8 kilometers (17.3 miles) west of Cedar City. Channel 222 can be allotted to Station KSGC, Tusayan, Arizona, consistent with the requirements of the Commission's engineering rules, at coordinates of 35-58-14 NL and 112-07-53 WL, with a site restriction

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necessary to disturb our action in MM Docket No. 01-264 in which we allotted Channel 223A to Chino Valley, Arizona. See *Chino Valley, Arizona*, 17 FCC Rcd 21166 (MMB 2002).

⁷ Entravision Holdings, LLC is now the licensee of Station KRRN and has committed to pursuing the reallocation proposal originally advanced by Spectrum Scan.

⁸ 18 FCC Rcd 9308 (MB 2003).

⁹ Tusayan Broadcasting Company, Inc. ("Tusayan Broadcasting"), licensee of Station KSGC, has agreed to the channel substitution and Spectrum Scan has committed to reimburse Tusayan Broadcasting for the costs of changing its channel. In a related matter, we reject Tusayan Broadcasting's request to substitute Channel 222C2 for Channel 221A at Tusayan, because it was filed after the comment date in this proceeding. See 47 C.F.R. § 1.420(d).

of 0.6 kilometers (0.4 miles) southwest of Tusayan. Channel 246A can be allotted at Beaver, Utah, consistent with the requirements of the Commission's Rules, at coordinates of 38-16-37 NL and 112-38-25 WL.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 12, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Ash Fork, Arizona	267A
Dolan Springs, Arizona	289C
Fredonia, Arizona	278C1
Peach Springs, Arizona	285C3
Tusayan, Arizona	222A
Moapa Valley, Nevada	224C, 284C1
Beaver, Utah	246A
Cedar City, Utah	221C, 235C1

9. Filing windows for Channel 267A, Ash Fork, Arizona; Channel 278C1, Fredonia, Arizona; Channel 285C3, Peach Springs, Arizona; and Channel 246A, Beaver, Utah, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Entravision Holdings, LLC, for Station KRRN(FM), Dolan Springs, Arizona, IS MODIFIED to specify operation on Channel 224C at Moapa Valley, Nevada, subject to the following conditions:

(a) Within 90 Days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of MB Media Group, Inc. for Station KXFF(FM), Cedar City, Utah, IS MODIFIED to specify operation on Channel 221C at Cedar City, Utah, subject to the following conditions:

(a) Within 90 Days of the effective date of this Order, the licensee shall submit to the

Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Tusayan Broadcasting Company, Inc. for Station KSGC(FM), Tusayan, Arizona, IS MODIFIED to specify operation on Channel 222A at Tusayan, Arizona, subject to the following conditions:

(a) Within 90 Days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

13. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change of community of license of an FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Entravision Holdings, LLC, licensee of Station KRRN(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in its community of license.

14. IT IS FURTHER ORDERED That MM Docket No. 02-12 IS TERMINATED.

15. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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Assistant Chief, Audio Division
Media Bureau